IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL
Second Appeal No. 778/2001
(Old No. 2293/1988)

Maqsood Ahmad S/o Ramzani R/o Village
Shantar Shah, Pargana Roorkee,
District Saharanpur .. Appellant

Vs

1. Rahmat Ullah S/o Sarphu (deceased)
2. Alam Sher S/o Jeevna.
3. Khurshid (deceased)

3/1. Ahasan Ali
3/2. Ishrar
3/3. Anees
¾. Fhajan
3/5. Rashid
3/6. Ali Hasan
3/7. Sharoof
3/8. Smt. Salma

4. Noor Ahmad,
5. Km. Khurshida D/o Jeeva
6. Km. Jamila D/o Jeevna
7. Km. Shaqila D/o Jeevna
8. Smt. Rafiqan widow of Jeevna
   R/o Village Badheri Rajputana
   Pargana Roorkee,
   District Saharanpur ... Respondents.

Sri A.K. Sharma, learned counsel for the appellant.

Hon'ble B.C. Kandpal, J.

This Second Appeal, U/S 100 C.P.C. has been preferred by the plaintiff against the judgment and decree dated 17-8-1988, passed by Ist Additional District Judge, Saharanpur, in C.A. No. 225 of 1981, dismissing the appeal and affirming the judgment and decree dated 10-8-1981 passed by Civil Judge, Roorkee in O.S. No. 225 of 1974.

2- Brief facts of the case are that the defendant Rahmatullah (since deceased) and Jivana, father of other defendants had agreed on 15-10-71 to sell the property to plaintiff for Rs. 10,000/- and they executed an agreement in writing in his favour after receiving Rs.

7000/-. It was agreed that the balance of Rs. 3000/- will be paid at the time of registration. It was also agreed that the sale deed will be executed by 14-10-1972. The plaintiff gave notices to the defendant Rahamatullah and Jivana on 10-10-72 and 13-10-72 asking them to execute the sale deed but they did not turn up to execute the sale deed. The defendant committed breach of contract, hence suit was filed. The earlier suit 14/73, filed by the plaintiff, was dismissed for want of prosecution, hence the present suit was filed for specific performance of agreement to sell the property.

3- The defendants contested the suit by filing W.S. denying the allegations of the plaint. They also pleaded that no agreement to sell the property to the plaintiff was entered between the parties. They also denied the payment of Rs. 7000/- by the plaintiff to defendant Raahamat Ullah and Jivana. Plead of res-judicata was also raised. However, they alleged that the plaintiff had purchased 5 Biswa land for Rs. 500/- in his brother's name from them. They also alleged that they are illiterate and the plaintiff fraudulently obtained the thumb impressions of Rahamtullah and Jivana on some papers and some forged and fictitious agreement has been prepared by the plaintiff. The defendants also asserted that Rahamtullah and Jivana had installed a tubewell in the property in question and its value is not less than Rs. 10,000/- and the suit was undervalued.

4- On the basis of pleading of parties, the learned Munsif framed the relevant issues in the case. Thereafter, parties adduced evidence in support of their

case. The trial court vide its judgment and decree dated 10-8-81 dismissed the suit of the plaintiff.

5- Feeling aggrieved, the plaintiff/appellant preferred appeal before Ist Addl. District Judge, Saharanpur. The appellate court vide impugned judgment and decree dated 17-8-1988 dismissed the appeal and confirmed the judgment and decree of the trial court.

6- Being aggrieved by the judgment and decree of the lower appellate court, the plaintiff/appellate has preferred the second appeal before the Allahabad High Court, which has been transferred to this court after creation of new State.

7- Heard Sri A.K. Sharma, learned counsel for the appellant. None has appeared on behalf of the respondents inspite of personal service as well as service by refusal.

8- Having considered the arguments advanced by the learned counsel for the appellant and after perusal of the evidence on record, I am of the view that this second appeal is concluded by concurrent finding of facts. Therefore, I do not find any ground to interfere in the impugned judgments and orders passed by the courts below. Both the courts below have recorded concurrent finding of facts, which cannot be interfered at the stage of second appeal. I also do not find any substantial question of law involved in this case.

9- The appeal is dismissed in limine.

(B.C. Kandpal, J.)

Dated: October 17, 2006
ISB